THE ADVOCATE

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Big Engulf: Local 7-Eleven Lost in Fire

By E.J. Schloss
For The Advocate

Students looking for a quick off-campus caffeine break or a buffalo chicken "Go-Go" taquito have had to adapt in the last month, as a local provider went up in smoke. The Cheetos, Gatorade, beer and beef jerky whose expiration dates came too soon-gone are the necessary law school provisions that only a local chain convenience store can provide.

On the morning of Thursday, September 5, flames engulfed the 7-Eleven Convenience Store visible from the north side of SCU's campus. The 7-Eleven, located at 706 Benton Street, hosted what is described as an "enclosed building fire." Luckily, the 7-Eleven was located less than a block away from a Santa Clara City Fire Department. According to the incident report filed by the fire department, the alarm was raised at 7:29:01 a.m., with on-scene arrival occurring at 7:30:48 a.m.—a response time of 1 minute and 47 seconds.

There were no injuries during the incident. Currently, the cause of ignition is under investigation.

Upon arrival to the scene, firefighters were presented with heavy fire and smoke conditions in the space between the false ceiling and the roof. The 7-Eleven, a single story structure, was the only property involved in the fire. The material contributing most to the flame spread was sawn wood. Twenty-nine personnel from the fire department responded to the incident.

Once the responders achieved complete extinguishment, fire investigators made entry into the structure. Following this entry, the 7-Eleven staff were aided with the retrieval of the safe and its contents. The scene was cleared at 3:13 p.m. The store has been closed since and there is no word on whether there are plans to reopen the 7-Eleven within the near future.

Twenty-nine personnel from the SCCFD reported to the 7-Eleven fire last month. Photography courtesy Craig Allyn Rose, San Jose Fire Department Photographer. Additional photos on back page.

In this Issue:

Success of Rideshare Companies Spurs New CPUC Regulations

By Amanda Demetrus
Senior Editor

If you have been to San Francisco recently, there is no doubt you have seen the pink fluffy mustaches adorning civilian vehicles. These muppet-esque car accessories signify the driver is a Lyft driver, a popular ride-sharing service that has become a permanent fixture in San Francisco as well as other cities nationwide. There has been ample buzz around Lyft and other ridesharing services like Uber and Sidecar, and a few weeks ago the California Public Utilities Commission finally moved to legalize these programs while placing stricter restrictions on these companies to promote public safety.

Lyft, like other ride sharing services, connect users over an app on the user's iphone or Android device. Users must sign in through Facebook Connect and enter their credit card and contact information. When a user needs a ride, they simply open the app on their phone to a map that shows how far the nearest Lyft driver is from their location and the time until the driver arrives. In cities like San Francisco, this is commonly a matter of minutes as opposed to a taxi, which may take considerably longer. After requesting a ride, the app supplies the user with the driver's rating, name and information, and information about what car they drive. Drivers are supposed to greet their riders with a customary fist bump meant to signify Lyft's sense of community among drivers and passengers. Similarly, passengers are encouraged to sit in the font seat and shoot the breeze just as you would if a friend came to pick you up. Many Lyft drivers carry snacks and water and allow riders to select the radio station. After the ride is complete, the driver is paid through the app. No money ever changes hands, making the riding experience pleasant and simple. Riders pay a suggested donation, which is usually less expensive than a normal taxi ride, and the company takes a percentage commission. Users are required to rate their driver after their ride is complete.

Lyft is a San Francisco based company that was originally a spinoff of Zimride, another rideshare company that focused more on long distance road trip ride sharing. Lyft aimed to bring the benefits of ride sharing to city dwellers. Lyft's founders wanted to bring a new concept to traditional taxi or transportation services. The goal was to create a friendly community of users that participated in fun and social ride sharing while reducing traffic and helping the environment. Launched in the summer of 2012, Lyft has become undeniably popular with 100,000 registered users and 30,000 rides per week in its first year of operation. San Francisco Lyft drivers report making up to $35 an hour. Recently, in June of this year, Lyft completed a Series C round of venture financing raising $60 million in funding bringing the total amount

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See "**Lyft**"

Cars of Lyft drivers are labeled with fuzzy pink moustaches

Anti-Human Trafficking Awareness in the Bay Area

By Joseph Navé, Carlin Lozinsky, and Jessica Mawrence
International Human Rights Clinic

On September 23, as part of a "National Day of Action" to spread awareness of the rights protected by the International Covenant on Civil and Political Rights, the International Human Rights Clinic of Santa Clara Law hosted an event with local anti-trafficking experts. Each of the speakers shared their experiences and insight on anti-trafficking efforts in the Bay Area.

Kavitha Sreeharsha from the Global Freedom Center (GFC) discussed the "real faces" of trafficking. She explained trafficking victims are everywhere, that they are not only the sex-trafficked individuals the media portrays, and that "we might be sitting next to a victim and not even realize it." She also emphasized that law enforcement cannot be the only solution to human trafficking; other professionals have to play a role. It starts with education to create a knowledgeable community that can take action. The U.S. State Department estimates that there are 27 million victims worldwide, yet only about 40,000 are being identified per year.

Sreeharsha also emphasized the need to realize we are all consumers who use products made with forced labor. The "International Labor Organization says nearly 80% of human trafficking is labor." Yet labor trafficking remains under-identified. According to Sreeharsha, we can all "do our part to identify the 27 million enslaved." As law students, we should ensure that our future corporate employers follow effective human trafficking supply chain policies.

Sergeant Kyle Oki from the San Jose Police Department Human Trafficking Task Force explained that prosecutions of human traffickers must be grounded in a victim-centered approach that focuses on providing assistance to victims of human trafficking. He recognized that this approach presents challenges for law enforcement agents who are trained to focus solely on apprehending and prosecuting the traffickers.

Sgt. Oki noted that labor trafficking is a problem, but sex trafficking cases are much easier to investigate because police cannot go into a restaurant or a warehouse to identify labor trafficking victims. The Task Force, therefore, works closely with NGOs because trafficking victims are more likely to contact these agencies before law enforcement. Although labor trafficking is prevalent and difficult to investigate, commercial sex trafficking is also an open, major problem here in San José. Sgt. Oki estimated that SJPD rescued seventy-two children in the last six months.

Perla Flores from Community Solutions works with domestic violence victims. Her work eventually led her to discover that human trafficking victims in the Bay Area were in need of assistance. Community Solutions provides human trafficking victims access to resources like shelters, 24-hour crisis response, advocacy and empowerment.

For Community Solutions, the important pieces of human trafficking work include the "Four P's: protecting victims, prosecuting traffickers, preventing future trafficking, and partnership among advocates." Perla explained how Community Solutions works: once a victim has been identified, the South Bay Coalition to End Human Trafficking connects him or her with a case manager who provides support during three phases of the case: 1) Crisis Management, providing safety, food, housing and medical treatment; 2) Transitional Phase, connecting the victim with social service benefits and legal assistance; and 3) Long Term Stabilization Phase, which can last for years.

Professor Ruth Silver-Taube is an expert on the civil piece of human trafficking litigation. At the Katherine and George Alexander Community Law Center (KGACLC), Ruth helps low-income workers, such as domestic workers, nursing and group home staff, janitorial staff, and restaurant workers. She noted that civil litigation and administrative remedies are very important because they are "empowering the survivor" to bring a civil case, which the human trafficking victim controls, unlike in criminal prosecutions, where the prosecutor controls the case.

With the help of dedicated law students, **Professor Lynette Parker** and the KGACLC have submitted close to 80 visa applications on behalf of human trafficking victims. Her Clinic has helped people from all over the world. She, too, noted that labor trafficking is a serious issue in San José. She observed that roughly two-thirds of her clients are labor trafficking victims, working in restaurants, as domestic servants, and in the agricultural industry; and about one-third were trafficked into the commercial sex industry.

How You Can Help

Parker and Silver-Taube suggested various ways for students to get involved in the fight against human trafficking, either by working at the KGACLC or through its partner agencies. All panelists agreed that it starts, most importantly, with getting informed about the problem.

Get Involved with KGACLC

Students can help by handling real human trafficking cases. Through the immigration programs, Lynette Parker supervises law students helping victims apply for T-visas, which are visas given to victims of human trafficking that may eventually lead to Lawful Permanent Residence ("green card"). Students can also work in the workers' rights division, handling the civil claims made by the victims against their traffickers for work-related claims, such as wage and hour.

Take the International Human Rights Clinic (IHRC) at Santa Clara

Students at the IHRC work on real cases or advocacy projects involving human rights violations suffered by victims all over the world. Recently the Clinic submitted to the United Nations Human Rights Committee a "Shadow Report" on human trafficking in the United States. The report addressed concerns about U.S. implementation of the International Covenant on Civil and Political Rights. The U.S. is currently under review by the Human Rights Committee for the first time since 2006 and will participate in a public meeting before the Committee in October. The Clinic, along with the three students who wrote the report, will travel to Geneva to take part in the Committee's hearing.

Rumor Mill with Dean Erwin

By Susan Erwin
Senior Assistant Dean

This month, I would like to turn the tables around and ask you all for clarification on a rumor. I heard a rumor that there is a first year student out there who has already gotten a DUI. Is that true? If so and you know who this person is; please encourage him or her to come see me right away! When he/she responds that coming to see me is the last thing they want to do, please read him/her the following:

A. Student Service's goal is not to further punish this person but to help him navigate his way through the mess that he just created for himself!

B. This person is going to have to pass a Moral Character determination by the state bar association in order to practice law. Evidence of a possible substance abuse problem could cause the bar to delay or deny approval. She needs to understand the process.

C. If this person had any other incidents that were substance-abuse related – and then had another incident as a graduate law student - he will need to start taking action immediately to show the bar association that he has taken steps toward rehabilitation and recovery and we can explain how.

D. And lastly and most importantly, she might need help and we would like to provide assistance and support!

Some first-years are asking if they should sign up for a bar prep program right now. Professor Harrington at APD says "No! 1Ls do not need to sign up for a bar prep provider right now! This is a time to learn about the different providers - there are real and important differences among them. Anything that is free, you should take and use to see how you like the materials. Be a good consumer and research what you are buying. APD can also help you figure out what is right for you."

Some of you had questions about the new Supervised Analytical Writing Requirement (SAWR) deadlines. These were passed by the faculty last year and effect students who started law school in fall 2012 or later. The new deadlines require students to complete the SAWR at the end of the semester prior to their final semester. This may sound like unnecessary bureaucracy to you (as I have overheard in the hallways), but there are really good reasons for the change. There have been an increasing number of students who don't finish their SAWR and don't graduate! Once students finish classes and move on, it can be very difficult to re-engage and finish a paper. There have also been an alarming number of students who didn't finish their papers until days before the deadline to certify students to take the bar exam! We have spent the last few summers chasing down faculty all over the globe, who in turn are chasing down students, who in turn are panicking because they aren't cleared to take the bar! And then . . . if the paper turned in at the last minute requires re-writes . . . . that person can't finish in time to be certified to take the bar! All of this disappointment, stress and panic can be avoided by finishing the SAWR a whole semester before graduation! You are welcome. :)

Some of you have questions about when to take the MPRE and when to sign up for the bar exam. Great questions! I would recommend that you attend Grad 101 at the end of the month to hear all about bar requirements or watch the video of the session on the Student Services ClaraNet page shortly thereafter or check out this page on the website - http://law.scu.edu/bulletin/bar-examinations-and-requirements/ or use the handy Bar Admissions Information and Checklist on page 18/19 of the world-famous Pink Book!

We had a question about taking bar classes on a Pass/No Pass basis. The deadline to elect pass/no pass was last week but for future planning, here is the scoop on pass/no pass in bar courses.

- "Bar Courses" are those that are tested on the bar. They are not required but highly recommended. They are Bus Org, Remedies, Crim Pro, Wills and Community Property. These classes are subject to the grade normalization rules.

- Pass/No Pass is an option that allows you fill out a form to change your grading option from a letter grade to a Pass/No Pass grade. This is limited to 12 units total. An A-C is considered a Pass and a C- and below are given a No Pass.

- You are allowed to switch a bar course to a Pass/No Pass option.

- It happens about once a year that a student takes a bar course on a Pass/No Pass, doesn't study as hard for the class, ends up with a lower grade, which turns into a C- after grade normalization and then gets a No Pass in the class and is very unhappy! If you are going to go Pass/No Pass in a bar course, study for the A! (And if you are going to study for the A, you might as well get the A, so don't elect Pass/No Pass.)

Heard any good rumors lately?? Have any questions?? Let me know – serwin@scu.edu

Confesions From An ACLU Litigator

Chris Hansen speaks about his career and his victory in the breast cancer gene patent case

By Erica Riel-Carden
Biotechnology Law Group

For anyone currently prepping for an upcoming Supreme Court challenge, and for those of us who just fantasize about it, I recommend speaking with highly respected litigator Chris Hansen. Hansen recently retired from a forty-year career with the ACLU where he litigated for civil rights. During his career, he participated in landmark cases on desegregation, internet free speech, and mental health. But it was his recent victory in the Supreme Court case Association for Molecular Pathology v. Myriad Genetics, Inc., that has given him significant visibility.

With such an impressive record, one is caught off guard by Hansen's unpretentious demeanor. Armed with a boyish grin and casual attire, this passionate civil rights litigator flew across the country to share insight into life as a litigator, his career at ACLU, and a background of Myriad (commonly referred to as the "breast cancer gene patent case").

On August 26th and 27th, Hansen visited with students in civil procedure and con law classes; spoke on the advocacy behind Myriad at a standing-room only lunch; and, sat down with the Biotechnology Law Group for an intimate Q&A session. Special thanks to Professor Margaret Russell and the Center for Social Justice and Public Service for hosting his quick trip.

The Myriad Journey

In a little under an hour, Hansen guided law students and faculty alike through the procedural process of an ACLU case. His overall message: Keep It Simple Stupid. Winning with a rare unanimous victory, Hansen turned a complicated patent case into a simple civil rights issue: it is inherently wrong to patent human DNA.

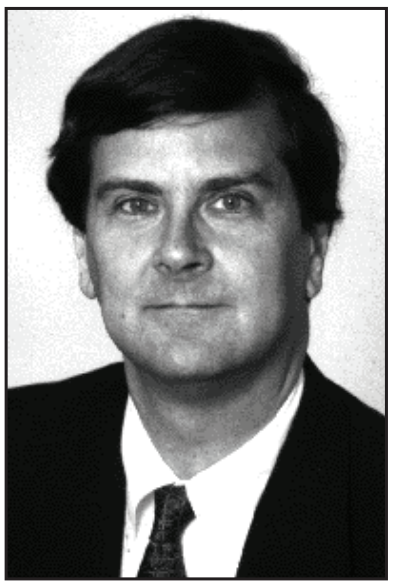
Before Myriad, the ACLU had never litigated a patent case. It all started because of a casual conversation in which the ACLU's Scientific Advisor told Hansen about patents that protect human genes. Puzzled, Hansen reasoned these patents must be related to some method, process, or other patentable subject matter requiring innovation. When she replied in the negative, that it was just solely DNA, Hansen immediately knew he wanted to investigate the case. How could someone patent DNA? For Hansen, it just didn't seem right. In fact, it felt completely wrong.

After choosing a sympathetic topic (breast cancer), finding a bad corporate citizen (Myriad Genetics), and recruiting civil rights plaintiffs (the Association for Molecular Pathology), the ACLU was off and running.

They premiered their first battle at the United States Patent and Trademark Office whom Hansen described as "enormously offended." Unsurprisingly, the case was dismissed and deemed frivolous. Strategically, the ACLU decided not to appeal to avoid the Department of Justice intervening as a party.

"The Stars Were Aligned"

At the lower Courts, Hansen described one pleasant surprise after the next. In the Southern District Court of New York (Manhattan), the ACLU drew a judge who apparently had a law clerk with a Ph.D. in genetics (which no one knew at the time). While studying strategic litigation maneuvers with the full expectation of losing, they actually won on their motion for summary judgment. Every client had standing. Every challenged patent claim was struck down.



Even at the appellate level where Hansen "got roasted" during oral arguments and the ACLU lost most of its plaintiffs due to standing, Hansen was still very much encouraged of only losing 2-1. They anticipated a flat 3-0 defeat with the "pro-patent" Federal Circuit. Additionally, Hansen was utterly shocked when the DOJ decided to support the ACLU, even more amazed when the Solicitor General argued personally at the Circuit Level.

Petitioning for certiorari was Hansen's proudest work in the case. His question presented, "are human genes patentable," was so simple. Particularly, he was amused with annoying the Patent Bar, who filed approximately twenty-five amicus briefs against it. Nevertheless, cert was granted.

Perfecting the "Glamour Stage"

Lastly, Hansen ended the lunchtime tale by describing the Supreme Court oral arguments. It went "relatively well" for Hansen. First, plan on having a conversation. Where the Federal Circuit Judges appear "god-like" in their high chairs and "David v. Goliath" atmosphere, the Supreme Court channels a more intimate setting. Designed for a casual conversation, do not let the Courtroom aesthetics throw you off.

Second, besides practicing anticipated questions with moot courts, learn how to answer questions. The trick is to answer it and get back to your point. Additionally, learn how to spot the "you're an idiot" question from the "you're a genius" question. Some of those Supreme Court Justices might be on your side after all, but only if you allow them to help you.

For Hansen, one of the last serendipitous moments occurred when Justice Kagan gave his opponent an "idiot" question. First, she teed up a simple query: Is an entire chromosome patentable? After some fussing from the respondent, she received a solid no to which she countered with the question: Is a kidney patentable? At that moment, Hansen described his elation and relief for no one could buy the argument that a kidney outside the body is patentable.

The Effect of Myriad

While the long-term effects of Myriad have yet to be felt, many legal professionals have already begun their analysis. Where a patent has no method claims and no new applications of knowledge, natural DNA segments, including isolated DNA segments, are not patentable subject material. However, synthesized complementary DNA remains patent-eligible, and the Court did not rule on any of the method claims. Furthermore, Myriad Genetics continues to sue parties for infringing on its valid patent claims.

Hansen on Litigation in General

Besides discussing Myriad, students had the opportunity to learn some litigation tips from Hansen.

- When arguing hard concepts to a judge or jury, prepare by brainstorming metaphors in your favor.
- When the Supreme Court grants your petition for certiorari, expect the phone calls. Just set your ringer to voicemail because the "nature of attention changes" and suddenly, everyone is interested in your case.
- Love what you do, and it will pay off. Hansen started his career right out of law school at the New York division of the ACLU. He admits having pondered whether he should move on, but always concluded he loved what he did, where he worked, and the people on his team.
- Have fun. For Hansen, the best part of being a litigator was cross-examination "hands-down." Mean or sweet, there's nothing like putting someone on the stand.

Chris Hansen considers himself an advocate of individual rights and the Constitution. As a 2L focused on IP and Life Sciences, I found Hansen to be an unexpected inspiration. How could this non-technical non-patent-bar-certified attorney make such a significant contribution to the scientific world in which he has no interest? By staying true to his genuine passion for helping people in the best way he knew how.

Often in law school, students forget the law is more than just hard cover-bound casebooks. Regardless of your own aspirations, please take note of Hansen's encouraging lessons and litigation insight. For "if you're a good lawyer, you're a good lawyer, whether you argue in front of the Supreme Court or not."

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A career in law has many paths. The Advocate encourages all law students to submit articles about their own journey.

We can be reached at scuadvocate@gmail.com.

Mind Games: Fighting the Epidemic of Concussions in Professional Sports

By Michael Bedolla
Sports Editor

Frank Gifford of the New York Giants declared that "pro football is like nuclear warfare: there are no winners, only survivors." Watch any NFL game, and you will witness axiom in all its high-definition glory as 300 pound men clad in athletic armor crash into each other at full sprint speeds. The most severe injuries of Gifford's day were limited mainly to broken bones or sprained ankles - injuries that are easily diagnosed and present little significant or long-term adverse consequences. Today's NFL is confronting a far more dangerous and covert injury: concussions.

A Culture of Ignorance: The NFL And Concussions

Santa Clara University's 12th Annual Sports Law Symposium engaged in a candid discussion of that very subject, inviting a distinguished panel of experts to discuss the culture of sports and the danger of brain injuries. The Symposium quickly determined that existing measures to protect players of all ages from concussions are inadequate.

A panel of medical experts explained the difficulty in diagnosing and evaluating concussions. Quickly making a sideline or locker-room diagnosis of a potential concussion doesn't rely upon physical examination, but player trust and confidence. The best method involves baseline testing, requiring the athletic trainer to know each player's unique brain functions, (via testing his balance, memory functions, and the ability to concentrate and solve problems). A player's responses after a hit to the head are compared with their normal responses. This method naturally requires complete honesty by the player in order to make a proper diagnosis.

The Symposium's keynote speaker was *New York Times* writer Alan Schwartz, who has written several articles on the failure of the NFL to implement proper on-field protocols for concussions, or even acknowledge their danger. His initial investigations into concussions in football directly conflicted with the NFL's warrior culture, where the norm is that players should continue playing at all cost, even to the detriment of their own health. It came as no surprise that the NFL's first response to questions about concussions were to declare they were no danger and that players could continue playing after suffering one if they felt able to continue.

Ronnie Lott, a four-time Super Bowl champion with the San Francisco 49ers, exposed the folly of such a program. By holding the players personally and exclusively responsible for removing himself from the field of play, the league's concussion code was essentially worthless. No self-respecting football player would dare let his teammates down or open himself to scrutiny by willfully removing himself from a game, no matter the seriousness of the injury. Concussions were invisible injuries, and therefore non-existent.

This reckless or deliberate ignorance of concussion danger is not limited to the players themselves, but permeates the players' union representation as well. The former head of the NFL Players Association, Gene Upshaw, denied evidence linking concussions with early-onset dementia by making a "correlation doesn't equal causation" argument. According to official NFLPA statements, since dementia manifested itself in non-football playing members of the general population, it was premature or alarmist to suggest the increased probability of dementia among current and former NFL players was attributable to concussions. The fact that a 2009 NFL study indicated former NFL players were 17 times more likely to develop dementia than members of the general population would seem to suggest otherwise.

And while professional and collegiate football administrators highlight that they maintain full-time medical trainers on hand for all practices and games, the panel exposed an open secret in football: the trainers were, and still are, giving biased medical advice to those entrusted to their care. For instance, in a survey of 100 NCAA athletic trainers, half reported that they were pressured by football coaches to return concussed players to the field of play. Additionally, the head coach has considerable influence over the hiring and retention of athletic trainers; those trainers that placed player safety above success on the field could quickly find themselves replaced by another athletic trainer with more malleable priorities.

Hits when leading with one's helmet are a primary cause of concussions in professional football, as Brandon Meriweather (#31) demonstrates - Source: ESPN

Another contributing factor to the problem of concussions in football is that, unlike most sports, football features a top-heavy organizational structure: other football leagues - youth, high school, collegiate, and recreational adult - all follow the lead of the NFL. These leagues mirror NFL rules without any formal arrangement, and will make only minor changes based on player age and maturity, if any changes are made at all. In spite of this knowledge, the NFL's attempts to constructively regulate the game of football beyond the professional level are negligible to non-existent.

The More Things Change, The More They Stay The Same

The NFL allegedly reaffirmed its commitment to player safety and reducing concussion-related injury a few weeks ago with a settlement between the league and former players. In their complaint, more than 4,500 former players alleged the NFL concealed the long-term dangers of concussions, and that they were pressured to return to play after suffering the same. The NFL's $765 million settlement was lauded by NFL commissioner Roger Goodell as a monument to the league's commitment to player safety, and added that the amount was considered fair by both mediators and the plaintiffs.

A closer look at the settlement would suggest the NFL simply bought out the lawsuit to avoid the bad publicity it would bring. The $765M is paid over a 20 year period, which, for a league that raked in over $9 billion in 2012 alone, makes the actual cost to the NFL financial juggernaut hardly noticeable. Perhaps most importantly, the league did not admit any wrongdoing in its conduct.

More disturbing than the compensation to those victims of football-related concussions is the NFL's lack of progress in adequately preventing concussions in games being played this very season. While the league has banned helmet-to-helmet hits and players leading with the crown of their helmet, the ban is only as effective as its in-game enforcement and making penalties for violation serve as a deterrent. NFL officials do not have the benefit of slow-motion replays of every questionable hit, meaning only the most flagrant and obvious hits will be penalized. Suspensions for dangerous hits are rare, and fines only become an effective deterrent after a player has established himself as a "repeat offender."

The ineffectiveness of NFL rule changes has already been exposed, with several dangerous plays already getting the NFL's proverbial wrist-slap treatment. In their Week 2 game against Green Bay, Washington's Brandon Meriweather twice violated the rule banning hits when leading with one's helmet: the first hit resulted in Green Bay's Eddie Lacy being removed from the game with a concussion, while second hit removed Meriweather himself for the same. Tampa Bay's Dashon Goldson committed a similar illegal hit versus New Orleans' Darren Sproles, but thankfully no concussion followed there. Meriweather was fined $42K and Goldson fined $100K, but none of those hits were penalized and neither player was suspended for Week Three. Both players justified their actions by saying they didn't intend to cause injury and that the game is meant to be played aggressively.

While every athlete assumes a certain degree of risk when participating in sports, especially a high-intensity sport like football, those that play at the highest levels shoulder the greatest responsibility to guarantee the game is played safe. Professional players cannot admonish kids to play sports safely while they themselves play dangerously on national television. The league for its part must ensure that players do not bend the rules for the sake of ratings. The NFL finally admitted as much to its players, displaying on posters in every team's locker room: "Other Athletes Are Watching."

Breaking the Ice

An Interview With Sharks General Counsel And COO, John Tortora

Sharks Sports Entertainment COO and General Counsel John Tortora - Source: Silicon Valley Business Journal

By Michael Bedolla
Sports Editor

It is no secret that I'm a huge Sharks fan. Most of my articles for this very newspaper have been hockey related, my TV is set by default on the NHL Network, and Sharks jerseys are my de facto school uniform. Looking to fuse my zeal for teal with my legal education, I reached out to the Sharks organization for an article on being a lawyer attached to a professional sports team. John Tortora, the Sharks' General Counsel, graciously responded to my request and met with me while at the Sports Law Symposium.

Into the Penalty Box: Concussions in the NHL

Football is not alone in its fight to reduce concussions in its sport; hockey is another high-speed, high-impact game where player-on-player collisions are frequent and the danger of concussion injury is very real. But the differences between the NFL and the NHL in its response to the concussion epidemic are profound.

Mr. Tortora proudly emphasized that the NHL was at the forefront of concussion awareness. While the NFL only established return-to-play protocols surrounding concussions early this decade, the NHL's protocols date back to the late 1990s. These protocols are designed to take the decision of whether the player is medically fit to play out of the player's control, and provide medical personnel with an appropriate baseline comparison to properly evaluate the seriousness of an in-game concussion.

When asked how closely the NHL works with other hockey leagues to keep the game safe, the picture painted by Mr. Tortora is contrasted sharply with football. The NHL maintains and takes full advantage of its close partnership with the American Hockey League (AHL). Because the NFL lacks a dedicated minor-league system, there is greater difficulty in adopting new rules, as proposed changes endure endless off-season debates in rules committees and the impact of new rules on the game is purely theoretical. The NHL-AHL partnership allows rule changes to be effectively tested under real-game conditions. The AHL essentially becomes the NHL's hockey laboratory, while still serving its primary role of developing young players.

Like the NFL, the NHL sees player safety as a combination of equipment and rules that work in concert to protect players. Mr. Tortora highlighted that the hockey arena itself has been made more player safe: the glass that separates the ice from the spectator seating areas has been redesigned to provide greater flexibility upon player collisions, reducing the likelihood of injury. But Mr. Tortora further cautioned that equipment alone is not the answer, stating that while player helmets and padding can protect the player, that same equipment also inflicts damage.

Joe Pavelski, a center with the San Jose Sharks, spoke with me after a scrimmage at Sharks Ice the following Saturday, and he agreed that player equipment can only go so far, stressing that it is the responsibility of the players to be aware of their surroundings and avoid dangerous plays. The responsibility of the player that initiates a collision (called "checking" in hockey parlance) is to avoid hits to the head or hitting players in particularly vulnerable positions along the boards that separate the ice from the spectator areas. Meanwhile, non-checking players still must be aware of their surroundings and be prepared to receive a check, especially when in open ice far from the boards.

> **"Mr. Tortora further cautioned that equipment alone is not the answer, stating that while player helmets and padding can protect the player, that same equipment also inflicts damage"**

The Business of Sports

John Tortora acts not just as General Counsel for the San Jose Sharks, but the Chief Operating Officer of Sharks Sports Entertainment. As COO, he assumes responsibility of the business of sports, and his list of duties reveals just how much work happens behind the scenes of our favorite teams. He oversees the SAP Center, the home of the Sharks, and works to keep the arena's doors open, not only with hockey games, but for concerts, figure skating exhibitions, NCAA March Madness basketball games, and more. He also works beyond the realm of professional hockey, managing the Sharks' AHL affiliate, the Worchester Sharks. Finally, he plays an important part in growing the game of hockey through management of three facilities in the Bay Area, providing the local schools and the general population with the opportunity to learn and play the game of hockey.

As General Counsel, the bulk of Mr. Tortora's primary responsibilities are keeping the Sharks in compliance with their myriad legal obligations. While the NHL head office handles most of the interstate and international legal issues that affect all teams, Mr. Tortora focuses on the local legal issues since the majority of the Sharks business is within California. And although not directly involved in last year's Collective Bargaining Agreement negotiations with the NHL Players' Association, his participation was limited to providing feedback on the various proposals and counter-proposals by both sides.

I also asked why the NHL allows me to stream out-of-market hockey games, but always blocks me from watching the Sharks. Mr. Tortora explained the primary economic value in a regional sports network's arrangement with a team is exclusivity. In-market streaming would significantly reduce the value to a network, since there would be no incentive for customers to purchase cable packages if fans could watch for free. But he also acknowledged that advancing technology requires the entire sports industry to adapt to the marketplace, and believes it is only a matter of time before a workable solution will be found.

Additional Sports Concerns for the Sharks

I also took the opportunity to talk with Mr. Tortora about some other sports issues in hockey and the Bay Area. When asked whether he and the Sharks organization supported the A's move to San Jose, he was on the whole supportive of the move. Although they are not involved in either the movement to bring the A's to San Jose or the City's antitrust lawsuit, the Sharks would stand to benefit from such a move by virtue of the City of San Jose's increased nationwide exposure. There isn't any worry that the A's would take away fans from the Sharks, since the A's and Sharks are already competitors in the Bay Area sports landscape. The only concern the Sharks seem to have is the effect a new stadium would have on access to the SAP Center and its impact on the parking ecosystem.

I also asked Mr. Tortora about the upcoming Winter Olympics, which will interrupt the NHL for two weeks and will likely see several Sharks players compete for their respective home countries. The fact that the NHL schedule is interrupted isn't seen by Mr. Tortora as a significant risk to the league or player health, and he believes the increased exposure for the sport will ultimately benefit the Sharks and the league, although he added that the NHL is working with the International Olympic Committee for increased media access.

We also discussed the NHL's continued

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Sharks General Counsel and COO Discusses His Career in Sports Law

"Tortora"
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participation in the Winter Olympics and international hockey in general. Unlike basketball, hockey is a winter sport, and NHL participation in the Winter Olympics necessitates a suspension of league play while its best players go abroad. Mr. Tortora acknowledged that NHL participation is a debate that occurs every four years. One solution the NHL is exploring is bringing back the World Cup of Hockey: a summer hockey tournament that would supplant the Olympics as the preeminent international hockey tournament in much the same way it is for soccer.

Called Up to the Big Leagues

Starting in Sports Law

Mr. Tortora provided advice for students looking for a career in sports law. Sports law includes multiple disciplines, so students should educate themselves in antitrust, labor, intellectual property, insurance, and corporate law. And while ESPN may be a good source for the headline-grabbing legal issues facing sports, students should read *Sports Business Daily* and *Sports Business Journal* for awareness of the more commonplace legal issues that occur in the sports world.

Finally, Mr. Tortora urged aspiring sports lawyers to expand and refine their writing skills. Conventional IRAC writing may be suitable for legal briefs and motions to the court, but sports lawyers often write for a non-legal audience. Sports lawyers should emphasize brevity, using short-form legal writing that can explain a complex issue to a nonlawyer in a concise way.

John Tortora is a 1994 alumnus of Seton Hall University School of Law. He worked at NHL headquarters in New York for 14 years before joining the San Jose Sharks in 2011. The author of this article and The Advocate thank him for granting an interview, and wish the Sharks success this season. The 2013-14 NHL season begins October 3rd. Go Sharks!

Lyft, Uber Irk San Francisco Taxi Companies

"Lyft"
From Front Page

raised to $83 million. These investments have pushed the company's valuation just passed the $3.5 billion valuation mark. Investors who participated in the financing looked at other companies like Uber and Sidecar but decided to ultimately invest in Lyft because of the strong sense of community and the transparency of the company.

As anyone may have guessed, there has been a great deal of push back from certain communities to the arrival of these ridesharing companies on the transportation scene. Taxi services have complained about ride sharing services cutting into their businesses and public safety spokespeople have expressed concern with drivers ability to sidestep state licensing requirements imposed on taxi's and other transportation services. In response to this concern, last October the California Public Utilities Commission's Safety and Enforcement Division sent cease and desist letters as well as $20,000 worth of fines to Lyft, Uber, and Sidecare for operating without authority and other violations of state law. In settlement discussions between the Commission and these companies, there were additional safety precautions imposed on the ridesharing programs such that they could continue operation. Finally, late last month, the Commission unanimously voted to ratify a statement of proposed rulemaking that created a new category of transportation business, a Transportation Network Company (TNC). The Commission defined this as a company that "provide(s) prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles." If a company qualifies as a TNC then there are twenty-eight rules the company must abide by in order to obtain the proper licensing. Companies like Lyft already meet many of these requirements. Drivers must now submit to a criminal background check and must be denied employment if they have been convicted of driving under the influence, fraud, sexual offenses, or use of a motor vehicle in a felony within the past seven years. Drivers must also carry commercial liability insurance not less than one million dollars per incident. Other requirements include nineteen-point vehicle inspections and zero tolerance policies for drug and alcohol use by drivers.

Companies like Uber do not meet the personal vehicle element of the TNC definition and will be considered in the second phase of the Commissions rulemaking process. During the second phase, the Commission also will reevaluate existing regulations affecting limousines and other charter carriers to ensure public safety measures are up to date. Despite the potential benefit of the second phase to taxi cab companies and other similar services, these organizations are vocalizing their dissatisfaction with the Commission's decision. Despite this, California has made great strides in setting the stage for similar rulemaking in other states. Washington and Colorado are likely soon to follow suit.

Lyft continues to offer affordable rideshare services in San Francisco and is expanding to thirty-eight cities nationwide and certain Canadian cities. Lyft has succeeded in creating the culture its founders envisioned and will continue to grow because of it. Companies like Lyft coupled with the recent changes in California law may have changed the transportation landscape permanently and for the better. If nothing else, Lyft has surly brightened the often drab and cloudy climate of San Francisco with its charming pink mustaches.

Seeking Law Student Volunteers Interested in Intellectual Property Law!

Want to network with local IP law practitioners?
Want to see what it's like to conclude an IP law deal?

Volunteer to help at the IP Law Meets competition! Santa Clara Law has the honor of hosting the Western Regional IP Law Meets transactional competition in November. It's moot court for transactional law practice. Honors Moot Court External and the High Tech Law Institute need YOUR help to have a successful event!

Why volunteer?
- Opportunity to network with IP law attorneys who will be on campus to judge the event
- Meet law students from 10 different law schools around the country
- See live negotiation sessions in action – competitors will negotiate a technology development agreement
- Experience what it's like to attend an external competition without having
to prepare anything
- Invitation to attend the expert panel
- Food provided!

We're seeking volunteers to help with the competition on Friday November 1, with shifts either morning, mid-day or afternoon. To sign up, contact HMCE at SantaClaraLaw.HMCE@gmail.com.

HONORS MOOT COURT INTERNAL

The HMCI Board invites you to apply to be part of the Spring 2014 competition!

Come compete against your fellow law students for the chance to win cash prizes and the opportunity to compete against barristers-in-training next summer in England!

Applications will be available on ClaraNet under the "HMCI 2014" folder on October 7, 2013.

Please submit applications in by Friday, October 18, 2013 by email to jimmy.hmci@gmail.com.

Results issue by November 7, 2013.

If you have questions please email Jimmy at jimmy.hmci@gmail.com or Mana at manaettefagh@gmail.com.

EDITORIAL

SANTA CLARA LAW STUDENTS HAVE A ROLE TO PLAY IN IMPROVING OUR LAW SCHOOL RANKING

Santa Clara Law has a fantastic faculty with diverse backgrounds, and our school offers students a wide range of clinical and externship opportunities. But its U.S. News and World Report ranking does not reflect the positive experience most students have. This discrepancy may cause students to feel victim to a ranking that inaccurately reflects the stellar reputation SCU Law has within the Bay Area.

As a result, significant pressure is placed on the school to increase our rankings. Several things can be done; a good start would be new facilities. But as students, and later as alumni, we play a critical role in increasing our ranking as well.

Seriously invest in bar preparation: Bar passage rate accounts for a suprisingly small portion of the rankings, but it is an area where SCU Law should be doing significantly better. SCU Law's pass rate for July 2012 was 73%, lower than the average pass rate of California ABA-approved schools. Our pass rate in February 2013 was even lower: 57.1%. The school has taken significant steps to add classes which prepare students. But beyond that, we all should be playing a role to prevent one-quarter of our classmates from failing the bar the first time around.

Promote your pride for Santa Clara Law: Forty percent of our law school ranking is based on our reputation among legal professionals and academia. Those familiar with Santa Clara Law speak highly of the program, but the base of those familiar with the school needs to be expanded. Every time students meet with attorneys, whether at an internship, a social mixer, or simply by happenstance, they should let those attorneys know about the positive opportunities they have had at Santa Clara Law. The confidence of our contemporaries can greatly influence what professionals think of our program.

Apply to prestigious internships: It occasionally feels like certain opportunities are simply out of reach for Santa Clara Students. After all, when is the last time a SCU Law student held a post-graduation federal clerkship, or served as a DOJ Honors Fellow? However, these doors will not open unless we knock first. Even if students do not receive these highly coveted positions, placing Santa Clara Law resumes on important desks will begin to influence how judges and recruiters view our program.

Continue to increase Santa Clara's visibility in our local community: Our school provides so many opportunities to do good things beyond our campus perimeter. Whether achieving great things like helping release innocent prisoners with NCIP or submitting visa application for human trafficking victims, or more simple community service contributions like coastal cleanups or serving as a Spanish interpreter, students can play a major role in enhancing our school's reputation.

Law school rankings feel arbitrary, but we all can work to raise that number. Every member of the SCU Law community plays a crucial role in increasing our U.S. News and Word Report ranking, from the Dean to the 1L student.

Agree? Disagree? Send your thoughts to The Advocate at scuadvocate@gmail.com.

"Online Eraser" Law: Another Sign that Politicians Don't Understand the Internet

By Jake McGowan
Managing Editor

Jerry Brown caused a stir last Monday by signing SB 658, a law with a so-called "eraser" provision that aims to give minors a chance to remove content they post online and later find unflattering.

The first part of the bill basically prohibits Internet companies from marketing to minors the types of products they couldn't sell to minors face-to-face. The second part of the bill, commonly known as the "online eraser" provision, requires that all websites that allow California minors to register have an easy process for minors to delete content that they have posted.

Common Sense Media CEO Jim Steyer defended the bill in an interview with the Huffington Post: ""In today's digital age, mistakes can stay with and haunt kids for their entire life. This bill is a big step forward for privacy rights, especially since California has more tech companies than any other state."

As written, California SB 568 requires "the operator of an Internet Web site, online service, online application, or mobile application to permit a minor who is a registered user of the operator's Internet Web site, online service, online application, or mobile application, to remove, or to request and obtain removal of, content or information posted."

As is often the case when politicians try to regulate the Internet, the bill ends up at best useless and at worst harmful. In this case, it seems we're closer to the "useless" end of the spectrum. The most glaring deficiency is that the bill does nothing (nor *could* it do anything) to fix the bigger issue: when someone *else* posts unflattering photos or videos of you online.

In an interview with the Washington Post, Senate President pro Tem Darrell Steinberg hedged on the "teeth" of the new "online eraser" law. When asked whether the law would stop other people from copying and reposting such material, Steinberg responded: "No. We're not overselling the provision for that very reason. Once something has been transmitted to a third party, the Internet company has no obligation to try to take it down from the third party or the transferees Web site."

So that annoying friend-of-a-friend iPhone photographer who took a picture of you at the party? You are still going to need that awkward "can you please remove this picture" conversation when they inevitably post your picture all over Facebook. This makes the bill seem sort of unnecessary, since most major websites and forums already have these types of mechanisms readily available for users to delete their own content.

The backers of the bill seem most concerned with millennial college applications. After all, Kaplan Test Prep did a survey in 2012 that found over a quarter of college admissions officers now include Google or Facebook search results in applicant evaluations.

As a 25 year-old who did not have Facebook until I was 18, I do not envy the college admission process my 15-year-old sister will go through in the coming years. I know she doesn't have anything to worry about, but it's still somewhat unnerving to know that companies are currently inventing new ways to harvest and scan online data so they can vet every last digital inch of applicants.

While the threat is real and the concern seems genuine, this bill (or any bill for that matter) cannot satisfy the need for education and guidance for teens growing up in the social media age.

For a more thorough beatdown of the new law, see Professor Eric Goldman's coverage for Forbes at: http://www.forbes.com/sites/ericgoldman/2013/09/24/californias-new-online-eraser-law-should-be-erased/.

From Law.Scu.edu: Prof. Chien Joins White House Office of Science and Technology Policy

Santa Clara University School of Law Associate Professor Colleen Chien has been selected to serve in the White House Office of Science and Technology Policy (OSTP), as senior advisor for intellectual property and innovation to Todd Park, the U.S. chief technology officer.

Chien will take a leave of absence from her teaching duties for at least a year to fulfill her new appointment, which begins Sept. 16.

In her new role, she will advise Park on issues related to intellectual property and innovation, as well as privacy, open government, and civil liberties. She will help ensure that OSTP can fulfill its missions to coordinate science and technology policy across the executive branch and to provide advice to the president on science and technology policy matters.

"We are extremely proud that the White House has recognized Professor Chien's immense contributions to the field of patent and technology law," said Lisa Kloppenberg, dean of Santa Clara University School of Law. "She will be greatly missed in the classroom and on campus, but we are certain the nation will benefit from her service."

Chien brings substantial technical and policy expertise to OSTP, as an internationally recognized expert in patent law who was recently named one of the 50 most influential people in intellectual property worldwide by Managing IP magazine. She has testified before Congress, and has regularly provided comment and input to the Patent and Trademark Office, Federal Trade Commission, and the Department of Justice. Prior to entering academia, Chien practiced law at Fenwick & West LLP in San Francisco, worked as a strategy consultant, and, while a Fulbright Scholar, as an investigative journalist.

Predictions For The Breaking Bad Finale, "Felina"

Before watching the last episode of Breaking Bad, Jake McGowan and Michael Branson sat down and made predictions. You be the judge of who was farther off.

Jake McGowan's Predictions

Gretchen and Elliot's Charlie Rose interview about Gray Matter in "Granite State" provoked Walt's massive ego and influenced the return of Heisenberg. What's going to happen in "Felina?"

Here are some (likely wrong) random predictions:

- Lydia, always paranoid, reads more about the DEA's questioning of Skyler. She becomes aware of her "influence" over Todd, and uses it to convince him to get Skyler "out of the picture."

- Meanwhile, Jesse is in the middle of a cook and needs supervising. Thus, Todd sends Uncle Jack and crew to do the job while he stays behind and watches Jesse. Extremely creepy and awkward conversation ensues.

- Walt puts two and two together and realizes his family is at risk since Skyler had met Lydia at the Car Wash. Knowing Uncle Jack is a risk to his family, he high-tails it back to New Mexico, now loaded with an M60 he picked up at a Denny's.

- Walt creates some tripod contraption (out of wood?) and uses the M60 to gun down Uncle Jack's crew and interrogates Uncle Jack to tell him where he can find Todd and Jesse. He heads over to the compound.

- Scene cuts to Jesse, who somehow figures out a way to trick and kill Todd, possibly using some science-related knowledge he learned from Walt.

- When Walt approaches, Jesse tries to kill him with Todd's handgun. In a chaotic scene, Walt actually ends up killing Jesse. Walt finally sees what he has done to his "second son" and feels the need to atone for his sins.

- To save Skyler and the family, Walt purposely allows her to point him out to the police in return for good will/immunity.

I have no clue about:

- Who gets the ricin
- The extent to which Gretchen and Elliot will be involved
- What happens to Marie

Michael Branson's Predictions

Walt returns to his cabin, stashes a kitchen knife in his barrel, and waits for the arrival of Ed, the "vacuum repairman." Walt pays Ed a considerable sum to help him re-relocate. At an overnight pit stop, Walt climbs out of the propane tank and wakes Ed at knifepoint. He demands to know where Saul was relocated. After Ed tells Walt, Heisenberg brutally murders Ed. Walt drives to Nebraska, where he finds Saul working at a fast food restaurant eerily similar to Los Pollos Hermanos. Heisenberg demands the phone number of Saul's old gun dealer, Lawson. Saul obliges.

Back in Albuquerque, Walt calls Lawson and meets him at Denny's, where he picks up the car and weapons. Walt then promptly drives to his house and picks up the ricin.

By now, detectives have pieced together that he is back in New Mexico after speaking with Saul (full immunity) and Walt's neighbor Carol. Walt, needing added manpower, seeks the help of Jack Welker and his white supremacist gang. But Jack sees Walt's return as an opportunity to enslave Walt. Walt joins Jesse to cook, but Jesse is uncooperative. Walt again tries to take advantage of Jesse. Jesse, having none of it, begins attacking Walt. Jack is forced to kill Jesse.

Todd attempting to save his hero Mr. White, offers to learn the formula and spends days cooking with Walt. Walt manipulates Todd and convinces him to use the ricin on his own uncle and the gang. Todd does so. Walt is free to escape, but no longer has any ricin. He takes the remaining ricin himself by licking the scraps off the plates, surrounded by dead neo-Nazis.

Walt turns himself in and tells an elaborate story to protect Skyler. But Walt doesn't realize Skyler has already confessed the truth and is awaiting trial. Walt's health deteriorates, and he dies shortly after the interview believing he has saved his Skyler. Todd and Lydia continue the meth business, Todd ever the romantic. Skyler spends a decade behind bars, and Walt Jr. consoles with Aunt Marie before heading off to college, leaving his mother behind.

California Coastal Cleanup Day: Several SCU Law students participated in the California Coasta Commission hosted event this year. The Student Bar Association and the Environmental Law Society helped sponsor the SCU Law volunteer event. Students collected over thirty pounds of refuse at Natural Bridges State Beach in Santa Cruz, CA.

HMCE National Sports Law Negotiation Competition

Congratulations to Kyle Cakebread and Megan Gritsch, our first competitors in this year's Honors Moot Court External slate of events! Kyle and Megan took twelfth place out of a field of thirty-six competing teams from around the country in the National Sports Law Negotiation Competition. The competition was September 20-22, 2013 in San Diego, and teams attended the Padres game, a sports law symposium, and competed before panels of sports law practitioners. Please congratulate them on their outstanding showing and having represented Santa Clara Law on the national stage.

Photos of 7-Eleven Fire Courtesy Craig Allyn Rose